



Wiley Rein & Fielding LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

November 29, 2005

Marnie K. Sarver
202.719.4289
msarver@wrf.com

Virginia Office
7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wrf.com

FILED ELECTRONICALLY (BY ECFS)

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

Facility ID Number: 35190

Re: MB Docket No. 05-317
KMTV-DT, Omaha, NE
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST

Dear Ms. Dortch:

Pursuant to the Commission's Public Notice DA 05-2979,¹ and Section 339 of the Communications Act, as amended by the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"),² Emmis Television License, LLC ("Emmis"), licensee of KMTV and permittee of KMTV-DT, Omaha, Nebraska ("the station" or "KMTV"), hereby requests a waiver to prohibit satellite subscribers from receiving or conducting digital signal strength tests to demonstrate the eligibility of such subscribers to import distant network signals within the KMTV local service area. In support of said waiver, the following is shown.

¹ See Public Notice, *TV Station Requests for Waiver of Digital Testing Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004 to be Filed by November 30, 2005 or February 15, 2007*, DA 05-2979, (rel. Nov. 17, 2005).

² See 47 U.S.C. § 339 as amended by Section 204 of the SHVERA.

Federal Communications Commission

November 29, 2005

Page 2

KMTV is a CBS network affiliate serving Omaha, Nebraska. Omaha is ranked number 76 in the top 100 television markets. The station has received a tentative channel designation on its allotted digital channel.³ As such, under SHVERA, it will become subject to requests for tests of its digital signal beginning April 30, 2006. Requests for waiver of such testing may be filed no later than November 30, 2005, where any of six criteria specified in Section 339(a)(2)(D)(viii) are present, including a showing that the station's digital signal coverage area is limited due to use of a side-mounted antenna.

KMTV-DT is authorized to operate with 1000 kW at a height above average terrain ("HAAT") of 425 meters, using a top-mounted antenna. The station's analog antenna currently occupies the top-mounted position on the tower. To preserve analog service to the public until the end of the DTV transition, KMTV's digital antenna is side-mounted immediately below the analog antenna, at a height of 393 meters HAAT. Although it has constructed a digital facility capable of the full megawatt operation, the station requested a waiver of the Commission's July 1, 2005 use-it-or-lose-it deadline in order to retain interference protection for the area not currently being served by the digital signal, due to the reduced height of the side-mounted antenna.⁴ Similarly, KMTV hereby requests waiver of the digital signal testing provisions of SHVERA to protect any KMTV digital "white area" resulting from the use of the side-mounted antenna from importation of distant CBS network signals. Grant of the waiver will serve the public interest by preventing fragmentation of KMTV's digital service area while preserving service to current analog viewers.

³ See Public Notice, *Tentative Digital Channel Designations for Stations Participating in the First Round of DTV Channel Elections and Second Round Election Filing Deadline*, DA 05-2649, (rel. Oct. 4, 2005) at Attachment 1, pg. 8.

⁴ See Request for Waiver of Replication/Maximization Interference Protection Deadline, dated June 16, 2005, attached hereto as Attachment A. Note that KMTV-DT is currently operating at 700 kW under Special Temporary Authority. A request to modify said authority, to operate with 1000 kW, was filed concurrently with the waiver request and is pending (see BDSTA-20050616ABL).

Wiley Rein & Fielding LLP

Federal Communications Commission
November 29, 2005
Page 3

This request is being filed electronically using the Commission's Electronic Comment Filing System. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink that reads "Marnie K. Sarver". The signature is written in a cursive, flowing style.

Marnie K. Sarver

Attachment: July 16, 2005 KMTV Waiver Request

cc: Nazifa Sawez (*by USPS and electronic mail*)

ATTACHMENT A

**Federal Communications Commission***KMTV**DTV waiver*

chmod: WARNING: can't
access /usr/local/httpd/htdocs/prod/ecfs/16663_1118959206.efs.err /usr/local/httpd/htdocs/prod/ecfs/16663_1118959206.efs.err: No such file or directory
No such file or directory /usr/local/httpd/htdocs/prod/ecfs/16663_1118959206.ftl: No such file or directory
directory /usr/local/httpd/htdocs/prod/ecfs/16663_1118959206.efs.err: No such file or directory
directory /usr/local/httpd/htdocs/prod/ecfs/16663_1118959206.ctl: No such file or directory **The FCC**

**Acknowledges Receipt of Comments From ...
Emmis Television Licenses, LLC
...and Thank You for Your Comments**

Your Confirmation Number is: '2005616617867 '

Date Received: Jun 16 2005

Docket: 03-15

Number of Files Transmitted: 1

DISCLOSURE

This confirmation verifies that ECFS has received and accepted your filing. However, your filing will be rejected by ECFS if it contains macros, passwords, redlining, read-only formatting, a virus or automated links to source documents that is not included with your filing. Filers are encouraged to retrieve and view their filing within 24 hours of receipt of this confirmation. For any problems contact the Help Desk at 202-418-0193.

[Initiate a Submission](#) | [Search ECFS](#) | [Return to ECFS Home Page](#)

[FCC Home Page](#)[Search](#)[Commissioners](#)[Bureaus/Offices](#)[Finding Info](#)

updated 12/11/03



Wiley Rein & Fielding LLP

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

Virginia Office
7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wrf.com

June 16, 2005

Marnie K. Sarver
202.719.4289
msarver@wrf.com

**ELECTRONICALLY FILED
(VIA ECFS)**

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Facility Id. No. 35190

**Re: MB Docket No. 03-15
KMTV, Omaha, NE
Request for Waiver of Replication/Maximization Interference
Protection Deadline**

Dear Ms. Dortch:

On behalf of Emmis Television License, LLC ("Emmis"), the licensee of digital television ("DTV") station KMTV, Omaha, Nebraska (Facility ID No. 35190) ("KMTV"), we hereby request a waiver of the July 1, 2005 replication/maximization interference protection deadline for digital television stations affiliated with the top four networks in markets 1-100. *See Second Periodic Review of the Commission's Rules and Regulations Concerning the Transition to Digital Television*, MB Docket No. 03-15, FCC 04-192, ¶ 78 (rel. Sept. 7, 2004). This request is being filed electronically through ECFS pursuant to the FCC's public notice regarding requests for waiver of the deadline. *See Public Notice, DTV Channel Election Issues – Compliance with the July 1, 2005 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline*, DA 05-1636 (rel. June 15, 2005).

Station KMTV currently operates on NTSC channel 3 and DTV channel 45. As a top four network-affiliated station in one of the nation's top 100 markets that has chosen its digital channel for post-transition operation, the station is subject to the Commission's July 1, 2005 replication/maximization interference protection deadline and must construct full, authorized facilities by that date. As explained below, KMTV is unable to complete construction by that date, rendering a waiver of the deadline appropriate. *See id.* ¶ 87; *see also* 47 C.F.R. § 1.3.

June 16, 2005

Page 2

As explained in Emmis' November 19, 2004 filing,¹ the station's NTSC antenna is top-mounted on its tower at a height above average terrain ("HAAT") of 418 meters. To allow the station to provide digital service replicating its NTSC Grade B service, KMTV was given a DTV allotment specifying an ERP of 1000 kW and a HAAT of 418 meters. The station's current "maximized" DTV construction permit specifies 1000 kW at a HAAT of 425 meters.² KMTV is currently broadcasting digitally with another side-mounted antenna at 393.4 meters on the same tower and at reduced power, pursuant to special temporary authority ("STA"). A request to modify KMTV's existing STA to increase its power to full power (1000 kW) is being filed concurrently, and a copy of that request is attached hereto.³

Pursuant the FCC's replication/maximization interference protection deadline, KMTV understands that the station must by July 1, 2005 be operating with facilities specified in its DTV permit. In order to meet this requirement, however, KMTV must not only increase its power to full power, but also remove its NTSC antenna from the top of its tower and replace it with its DTV antenna.

The "swap" of KMTV's NTSC and DTV antennas would require the expenditure of significant resources and would serve to disrupt and impair the station's current level of analog service to the public. As noted above, the station has requested FCC authorization to, and intends to, be operating by July 1, 2005 with the full facilities specified in its permit, except for being at its current side-mounted height, and to operate with such facilities until the end of the transition. At that time, Emmis will replace KMTV's top-mounted analog antenna with its digital antenna and thereby provide service to its full "maximized" DTV contour.

A grant of the requested waiver would ensure that the station's interference protection is not limited to the DTV service area achieved on that date while avoiding the need for Emmis to expend substantial resources and sacrifice the

¹ The November 19 filing was submitted pursuant to the public notice regarding special circumstances surrounding FCC Form 381 certifications. *See* Public Notice, *Electronic Mailbox Established for FCC Form 381*, DA 04-3495 (rel. Nov. 4, 2004).

² The seven meter increase in height, which results in the permit being "maximized," is due to the much greater size of the Channel 3 analog antenna as compared to the much smaller Channel 45 digital antenna.

³ The current STA for reduced facilities expires on June 16, 2005. *See* FCC File No. BEDSTA-20041115AGZ (as extended).

Wiley Rein & Fielding LLP

June 16, 2005

Page 3

quality of its analog service during the transition. Under these circumstances, Emmis submits that a waiver of the July 1, 2005 replication/maximization interference protection deadline is appropriate.

If there are any questions concerning this matter, please contact the undersigned.

Sincerely,

/S/

Marnie K. Sarver

cc (by email): Shaun Maher

WRFMAIN 12344158.2

Federal Communications Commission Washington, D.C. 20554	Approved by OMB 3060-0386 (July 2002)	FOR FCC USE ONLY
Engineering STA		FOR COMMISSION USE ONLY FILE NO. -
Read <u>Instructions/FAQ</u> before filling out form		

Section I - General Information

1.	Legal Name of the Applicant EMMIS TELEVISION LICENSE, LLC		
	Mailing Address 3500 W. OLIVE AVENUE SUITE 1450		
	City BURBANK	State or Country (if foreign address) CA	Zip Code 91505 -
	Telephone Number (include area code) 8182380209		E-Mail Address (if available) MRICE@EMMIS.COM
	FCC Registration No	Call Sign KMTV	Facility ID Number 35190
2.	Contact Representative (if other than licensee/permittee) MARNIE K. SARVER		Firm or Company Name WILEY REIN & FIELDING LLP
	Mailing Address WILEY REIN & FIELDING LLP 1776 K STREET, NW		
	City WASHINGTON	State or Country (if foreign address) DC	ZIP Code 20006 -
	Telephone Number (include area code) 2027197000		E-Mail Address (if available) MSARVER@WRF.COM
3.	Purpose: <input checked="" type="radio"/> Engineering STA <input type="radio"/> Extension of Existing Engineering STA <input type="radio"/> Legal STA <input type="radio"/> Extension of Existing Legal STA		
4.	Service: DT		
5.	Community of License: City: OMAHA State: NE		
6.	If this application has been submitted without a fee, indicate reason for fee exemption (see 47 C.F.R. Section 1.1114): <input type="radio"/> Governmental Entity <input type="radio"/> Noncommercial Educational Licensee/Permittee <input type="radio"/> Other <input type="text"/>		

TECHNICAL SPECIFICATIONS

Ensure that the specifications below are accurate. Contradicting data found elsewhere in this application will be disregarded. All items must be completed. The response "on file" is not acceptable.

TECH BOX

7.1.	Channel: 45
7.2.	Zone: <input type="radio"/> I <input checked="" type="radio"/> II <input type="radio"/> III
7.3.	Antenna Location Coordinates: (NAD 27) Latitude:

	Degrees	<input type="text" value="41"/>	Minutes	<input type="text" value="18"/>		Seconds	<input type="text" value="25"/>	<input checked="" type="radio"/> North	<input type="radio"/> South		
	Longitude:										
	Degrees	<input type="text" value="96"/>	Minutes	<input type="text" value="01"/>							
	Seconds	<input type="text" value="37"/>	<input checked="" type="radio"/> West	<input type="radio"/> East							
7.4.	Antenna Structure Registration Number:										
	<input type="text" value="1025131"/>										
	<input type="checkbox"/> Not Applicable <input type="checkbox"/> Notification filed with FAA										
7.5.	Antenna Location Site Elevation Above Mean Sea Level:										
	<input type="text" value="366.4"/>										meters
7.6.	Overall Tower Height Above Ground Level:										
	<input type="text" value="410.2"/>										meters
7.7.	Height of Radiation Center Above Ground Level:										
	<input type="text" value="369.7"/>										meters
7.8.	Height of Radiation Center Above Average Terrain:										
	<input type="text" value="393.4"/>										meters
7.9.	Maximum Effective Radiated Power (average):										
	<input type="text" value="1000"/>										kW
7.10.	Antenna Specifications:										
	<input checked="" type="radio"/> Nondirectional <input type="radio"/> Directional										
	a. Manufacturer <input type="text" value="DIE"/> Model <input type="text" value="TFU-30DSC-R-04"/>										
	b. Electrical Beam Tilt:										
	<input type="text" value="0.75"/>										degrees <input type="checkbox"/> Not Applicable
	c. Mechanical Beam Tilt:										
	<input type="text"/>										degrees toward azimuth
	<input type="text"/>										degrees True <input checked="" type="checkbox"/> Not Applicable
	d. Polarization:										
	<input checked="" type="radio"/> Horizontal <input type="radio"/> Circular <input type="radio"/> Elliptical										
	Directional Antenna Relative Field Values:										
	Rotation (Degrees): <input type="text"/>										<input type="checkbox"/> No Rotation

Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value	Degrees	Value
0	<input type="text"/>	10	<input type="text"/>	20	<input type="text"/>	30	<input type="text"/>	40	<input type="text"/>	50	<input type="text"/>
60	<input type="text"/>	70	<input type="text"/>	80	<input type="text"/>	90	<input type="text"/>	100	<input type="text"/>	110	<input type="text"/>
120	<input type="text"/>	130	<input type="text"/>	140	<input type="text"/>	150	<input type="text"/>	160	<input type="text"/>	170	<input type="text"/>

180		190		200		210		220		230	
240		250		260		270		280		290	
300		310		320		330		340		350	
Additional Azimuths											
8. Please explain in detail the "extraordinary circumstances" which warrant temporary operations at variance from the Commission's Rules. In addition, please specify 1) the specific rules and/or policies from which the applicant seeks temporary relief; 2) how the public interest will be furthered by grant; and 3) the expected duration of the STA and the licensee's plan for restoration of licensed operation. If requesting variance with other than authorized technical facilities, please specify the exact facilities sought								Exhibit 21			
9. Anti-Drug Abuse Act Certification. Applicant certifies that neither applicant nor any party to the application is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.								<input checked="" type="radio"/> Yes <input type="radio"/> No			

I certify that I have prepared Engineering Data on behalf of the applicant, and that after such preparation, I have examined and found it to be accurate and true to the best of my knowledge and belief.

Name		Relationship to Applicant (e.g., Consulting Engineer)	
ROBERT D. CULVER, P.E., MD		CONSULTING EN	
Signature		Date (mm/dd/yyyy)	
		5/24/2005	
Mailing Address			
LOHNES AND CULVER			
8309 CHERRY LANE			
City	State or Country (if foreign address)	Zip Code	
LAUREL	MD	20707	
Telephone Number (No dashes or parentheses, include area code)	E-Mail Address (if available)		
3017764488	BOBCUL@LOCUL.CO		

I hereby certify that the statements in this application are true, complete, and correct to the best of my knowledge and belief, and are made in good faith. I acknowledge that all certifications and attached Exhibits are considered material representations.

Typed or Printed Name of Person Signing	Typed or Printed Title of Person Signing
Signature	Date (mm/dd/yyyy)

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

Validate

Save

Informal Menu

STA CIRCUMSTANCES

The applicant is currently operating pursuant to a reduced power STA (as extended) that expires on June 16, 2005. *See* FCC File No. BEDSTA-20041115AGZ. This request seeks special temporary authority to operate with the same facilities as the existing STA except with the full power authorized in the station's DTV construction permit (1000 kW). *See* FCC File No. BPCDT-19991026ABT.

As explained fully in the request for waiver of the replication/maximization interference protection deadline that is being filed concurrently, KMTV is unable to construct its full authorized DTV facilities by the July 1, 2005 deadline. The public interest will be served by a grant of the instant STA request, which will allow the station to continue to provide uninterrupted DTV service to the public throughout the remainder of the transition without degrading the station's existing level of analog service.

A map demonstrating coverage of all of Omaha, Nebraska, was included in the initial STA request. *See* FCC File No. BDSTA-20030124AHB. Because Emmis is proposing to increase power at the same site, a new coverage map is not necessary. The modified STA facilities will continue to comply with the FCC's rules, including, as the attached engineering statement demonstrates, the RFR exposure guidelines.

Accordingly, on behalf of Emmis, we hereby respectfully request an STA to operate with the facilities specified in this request for a period of six months.

EXHIBIT 1
ENVIRONMENTAL STATEMENT
RE: SPECIAL TEMPORARY AUTHORIZATION
KMTV-DT 1000 KW 393.4 M HAAT CH. 45
OMAHA, NEBRASKA

The applicant, Emmis Television License, LLC, hereafter Emmis or KMTV, proposes to modify its Special Temporary Authorization (STA) to activate digital television (DTV) station KMTV-DT, Channel 45, Omaha, Nebraska at reduced facilities, FCC File No. BMDSTA-20030327AIL. The station now requests authorization to increase its temporary operation on Channel 45 with an increased effective radiated power (ERP) of 1000 kW rather than the present STA power of 700 kW. The instant request to change the temporary authorization for additional power is categorically excluded from environmental processing by Section 1.1306 of the Commission's rules since the specified facility does not involve a transmitter location as described in Section 1.1307(a) and does not exceed the safety standards for human exposure to radio-frequency (RF) energy in Section 1.1307(b) as described below. Accordingly, the temporary facility is deemed not to have a significant effect on the quality of the human environment under Section 1.1307 and does not require an environmental assessment.

The temporary low power operation for KMTV-DT will not result in RF field exceeding the *RF Radiation Exposure Limits* specified in Section 1.1310 of the Commission's rules. Specifically, this proposal complies with the maximum permissible exposure (MPE) limits of 437.33 $\mu\text{W}/\text{cm}^2$ for general (uncontrolled) exposure and 2,186.67 $\mu\text{W}/\text{cm}^2$ for occupational (controlled) exposure established for Channel 45 at 656 MHz. Compliance with these limits was determined based on a "worst case" estimation of ground level power density using the EPA prediction method adopted by the Commission. The antenna type and operating parameters specified in the STA proposal were assumed in

the calculation of power density.

The “worst case” power density level accessible at two meters above ground as a result of the temporary Channel 45 facility is calculated to be $2.44 \mu\text{W}/\text{cm}^2$. A conservative antenna relative field value of 0.1 was assumed in making this “worst case” determination based on the manufacturer’s elevation pattern and tabulation attached as Figures 1 and 2. These figures demonstrate that the above field value is not exceeded at any angle greater than 10° below the horizontal. Since the estimated “worst case” contribution for the temporary facility is less than 5% of both the uncontrolled and controlled MPE limits, the applicant is not required to further evaluate the antenna location with respect other RF contributors.

It has been demonstrated that the temporary facility will comply with the occupational exposure guideline at any ground level location. However, workers at higher elevations on the antenna structure, closer to the RF source, will be protected from excessive exposure to RF fields in accordance with the methods recommended in *OET Bulletin No. 65, Version 97-01*. The applicant will adopt a work policy designed in coordination with other users at the site to avoid harmful exposure when work is being done at higher elevations on the tower. Preventive steps to avoid excessive exposure shall include scheduling work on the tower when the facility is shut down or operating at reduced power or by time averaging.

Respectfully submitted,

LOHNES AND CULVER

Laurel, MD 20707
301-776-4488

May, 2005